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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,100	09/18/2003	Takahiro Matsumoto	1232-5157	6139
27123	7590	07/14/2005	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EVERHART, CARIDAD	
			ART UNIT	PAPER NUMBER
			2891	
DATE MAILED: 07/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/665,100	MATSUMOTO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Caridad M. Everhart	2891	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 24-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4-26-2005 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-26, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Kikkuchi (US 20020042664A1).

Kikuchi discloses a detection step of detecting an image of a plurality of areas of a wafer(paragraph 0006 discloses that an alignment mark is provided in a plurality of shot areas of a wafer). There is a processing step of processing using a plurality of methods(in paragraph 0096 is described a subroutine 268; in paragraph 0104 is described a subroutine 270). Expressions are obtained for both methods(paragraph

0240 describes that expressions are obtained for algorithm 268; paragraph 0237 describes that statistical computations are carried out in subroutine 270). Positions are obtained by these algorithms, as this is the shot data(paragraph 0006). There is an evaluation step in which the method in which the position error is minimized is chosen(paragraph 0254 describes that subroutine 268 or 270 is chosen). The error in the position is the difference between a position of a mark obtained by the signal processing step and that obtained by a calculated function(paragraph 0317; paragraph 0197 gives a definition of the deviation or error in a coordinate). A template would be the curve which corresponds to the function, so therefore Kikuchi teaches a template, although the word template is not used. The functions obtained by the two different evaluation methods would correspond to more than one template, or different templates. The selection of one of the methods is made with respect to each of the shot areas (paragraph 0242 states that the selection of the method of calculation which will minimize errors is made for each shot ; paragraph 0335 states that the calculations are carried out for each shot area). Because the shot areas can include alignment marks, the selection step can select one of the methods with respect to each of the marks.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims <sup>31-34 are</sup> rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi as applied to claim 24 above and further in view of Nishi(US 4,962,318).

Kikuchi is silent with respect to window widths, local maximum slopes, and the details of the apparatus such as the first and second processing units.

With respect to window widths, it seems from applicant's specification that the window widths are related to the coefficients of the expressions obtained by the evaluation methods, which would be within the ordinary skill of the art to obtain mathematical

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relationships between the parameters of the process and the coefficients for the expressions.

With respect to the slope being used in the calculations, Kikuchi discloses that the equations of the positions in terms of the x and the y components of the positions are calculated and stored in terms of Fourier series equations (paragraphs 0196, 0198, 0239, and 0285), which it is known can be related to the slope, so that it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the maximum slope calculations because Kikuchi uses maximum in Fourier series coefficients, which can be related to slope. Kikuchi further discloses the wafer stage which can be positioned (paragraphs 0122 and 0125). Because these expressions would contain nonlinearities, the graphs of these expressions would contain local maxima or minima, for which one could obtain the slopes, and because these expressions are different and were obtained by different methods, they would have different slopes.

With respect to first and second processing units, Kikuchi discloses a CPU (paragraph 0096), and also the apparatus disclosed by Nishi is incorporated by reference by Kikuchi (paragraph 0135). The apparatus disclosed by Nishi has an operational unit which determines the position of the shot areas (col. 16, lines 35-41). These values can be provided to a controller, which in the case of the apparatus taught by Kikuchi would be the CPU. Nishi further teaches a second unit (col. 18, lines 64-67 and col. 19, lines 1-9) which provides measured positions and supplies data to the memory, which in the

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case of the apparatus taught by Kikuchi would be the CPU. The CPU would then evaluate the data by the methods discussed in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caridad M. Everhart whose telephone number is 571-272-1892. The examiner can normally be reached on Monday through Fridays 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, B. Baumeister can be reached on 571-272-1722. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C. Everhart  
7-10-2005



CARIDAD EVERHART  
PRIMARY EXAMINER